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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 44th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 26 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)

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Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories, including:

(a) Question of human rights in Cyprus

(b) Situation of human rights in occupied Kuwait (continued)

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* The summary record of the first part of the meeting appears as document E/CN.4/1992/SR.44.

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1. Ms. MARSHALL-HARRIS (Barbados), said that her country was noted for its strict observance of the rule of law and for a long-standing record of profound respect for human rights in democratic institutions, which were embodied in its Bill of Rights. It could therefore be readily understood that her delegation felt growing concern at developments in Haiti, a country for which Barbados considered itself to have a duty of care. The democratic advances achieved in Haiti had been ruthlessly destroyed by a military coup in September 1991 which had overturned a Government elected by some 70 per cent of the Haitian people. Since then there had been numerous and largely substantiated reports of human rights violations in Haiti, including severe repression of supporters of the elected Government, extrajudicial executions, arbitrary arrests, detentions without trial and torture. It had also been alleged that soldiers had indiscriminately fired on crowds, killing hundreds of innocent and unarmed civilians, including many children.

2. It had further been claimed that at least 10,000 Haitians had fled abroad in order to escape such brutal victimization. While economic conditions in Haiti had always been deplorable, it was striking that so many had felt an urgent need to escape since the coup.

3. Her delegation supported the tireless efforts of UNHCR in Haiti, in addition to those being made by OAS. However, many refugees had since been obliged to return to their country, and the Commission must do its utmost to improve the continuing desperate situation with regard to human rights. Haiti was an exemplary case as far as the proposal to set up emergency human rights machinery was concerned, and in that connection the initiatives of the Governments of Austria and Brazil were to be welcomed. She called upon the Commission to take swift and resolute action to safeguard the lives and liberties of the Haitian people, and recommended that a Special Rapporteur should be appointed to that end.

4. Mr. ROA KOURI (Cuba) said that his country's right to development had been consistently frustrated by the hostility of the United States Government, which had been maintaining an economic blockade since 1961. The cost of the blockade to Cuba had been estimated at $15-30 million.

5. Notwithstanding such difficulties, his country had succeeded in reducing its rate of infant mortality, and life expectancy had risen to 76 years, while social security benefits had increased by one third, and expenditure on housing, public health, education and cultural activities had increased substantially.

6. The United States had tried to foist its own model of democracy on Cuba, attempting to destabilize its political structure and to assassinate members of its Government. That Government, and the entire political system in Cuba, was based on the sovereignty of the Cuban people and its genuine and effective participation in political life. The Constitution of Cuba had been approved by 97 per cent of the electorate.

7. Cuba had been the target of various United States missions of espionage and intimidation, including the manoeuvres carried out by the United States Navy in the course of its "Global Shield" programme, which testified to the Pentagon's continuing aggressive intentions towards Cuba.

8. Such provocations were at odds with the views expressed by the former Secretary of Defense, Mr. Robert McNamara, to the effect that Cuba no longer represented a threat to the United States.

9. On the economic front, the United States was exerting pressure on its allies to disrupt economic activities in Cuba and to frustrate its right to development. In particular, the United States authorities had stipulated that sugar should not be imported from Cuba, the apparent aim being to starve the country into "democratic change". In pursuing its goal, the Bush Administration had violated numerous internationally recognized human rights instruments.

10. The United States also continued to recognize, if not indeed to organize and finance, the activities of counter-revolutionary groups whose aim was to subvert the legitimate Government of Cuba.

11. The disinformation campaign against Cuba had been furthered by the Special Rapporteur's report, despite the fact that most of the allegations raised had already been clarified by his Government. That campaign had been coupled with a reluctance to recognize the responsibility of the United States for civilian casualties in the invasion of Panama and in the conflict with Iraq.

12. It was regrettable that the Commission would not be able to consider the question of human rights violations in Cyprus at its current session, but he hoped that a lasting and equitable solution to the problem would be one of the Commission's primary concerns at its next session.

13. In conclusion, he said that the human rights situation in Guatemala and El Salvador continued to cause disquiet. The peoples of those countries had suffered many tribulations, and it would be appropriate to renew the mandates of the respective Special Rapporteurs.

14. Mr. RATSIRAHONANA (Madagascar) said that violations of human rights were most frequently committed in countries in which democratic institutions were not firmly rooted and to which the concept of liberty was alien.

15. One problem of continuing concern to his Government was the human rights situation in Cyprus. The division of the country into two occupied zones had inevitably led to the break-up of families and restrictions on freedom of movement and residence, and problems remained with regard to disappeared persons and the ownership of property. The gap between the two communities in Cyprus was likely to widen unless a solution was found, and his delegation therefore supported the Secretary-General's efforts to use his good offices to arrive at a compromise based on Security Council resolutions.

16. During the current session several non-governmental organizations had alluded to the human rights situation in Madagascar. That situation had indeed been highly unusual in 1991, with widespread strikes in the public and semi-public sectors. Peaceful and non-violent demonstrations had taken place almost daily in the capital and the major cities in the country. The existence of two parallel Governments in Madagascar had, as could readily be imagined, created considerable problems for the maintenance of public order.

Fortunately, there had been few confrontations, and an agreement had been reached between all the parties concerned, but a lasting solution to the problem had yet to be achieved. The agreement reached on 31 October 1991 had established new governmental structures in which all the parties were collaborating and which were intended to lay the groundwork for the transition to the Third Republic, which would entail the drafting of a new Constitution. Regional forums were currently under way, and a national forum would be organized at the end of March, all under the auspices of the Ecumenical Council of the Christian Churches of Madagascar, acting as a neutral authority. Their function was to establish the guidelines and fundamental principles which would underly the Constitution, the draft of which would be put to a referendum at the end of June. General elections would be organized on the basis of the new Constitution, the aim of which would be to ensure greater liberty for the individual, political and trade union pluralism, and openness in the conduct of public affairs, as well as the establishment of a State based on the rule of law and the independence of the judiciary. So far, the transitional authorities in Madagascar had taken two measures to protect and safeguard human rights: they had set up an administrative Commission of Inquiry to determine responsibility for the confrontations that had occurred, and they had established a Mediator for Human Rights. The authorities were firmly resolved to create a democratic regime under which the protection of human rights would be a permanent concern.

17. Mr. FAN Guoxiang (China) said that allegations regarding China's human rights record had been made in the Commission by the representatives of a few countries and non-governmental organizations. In fact, however, the Chinese people had never enjoyed human rights and freedoms to the extent they now did, in addition to political stability, rapid economic growth and continuing social progress. The Constitution of China stipulated that all power belonged to the people. Deputies to the People's Congress were elected by a democratic electoral procedure, and those elected were broadly representative.

18. The Chinese people also enjoyed the freedoms of speech, the press, assembly, association and demonstration. They had the right to criticize and make suggestions regarding any State organ or official, and the right to address complaints to the relevant State organs in respect of violations of the law or dereliction of duty.

19. It was a basic principle of China's legal system to stress the unity between rights and duties. In exercising their freedoms and rights, citizens were not entitled to encroach upon the interests of the State, society or the collective, or the lawful freedoms and rights of other citizens. No organization or individual was above the Constitution and the law.

20. His Government attached great importance not only to the protection of political rights but also to the realization of the economic, cultural and social rights of the State, the people and the individual. Since the founding of the People's Republic of China, and particularly over the 10 or more years since the adoption of a policy of reform and openness, China had consistently been among the world's leading countries in terms of economic growth rates.

Between 1953 and 1990, there had been an average annual increase in GNP of 6.9 per cent. The high growth rate of China's economy during the 1980s, when GNP had risen by an annual average of 9 per cent, had brought about a remarkable improvement in living standards, real annual average net income having increased by 8.45 per cent for rural and 5.3 per cent for urban households.

21. In China, ideas alone did not constitute a crime. No one would be punished merely for holding dissenting political views. Criminal acts that endangered State security, such as conspiring to overthrow the Government or split the country, inciting armed rebellion, or espionage activities, were punishable in all countries as endangering State security.

22. Some countries persisted in exerting political pressure on China because, together with some other developing countries in a similar situation, its views on human rights differed from theirs. It placed emphasis on the equal importance of civil, political, economic, social and cultural rights, the indivisibility of individual and collective human rights and the importance of the right of developing countries like China to subsistence and development. It maintained that the promotion and protection of human rights were largely the responsibility of individual Governments and basically fell within the jurisdiction of sovereign States. Such responsibility stemmed not only from the principle of State sovereignty but also from the right of the people to preserve their national and cultural identity and freely to choose their political, economic and social system. His country endorsed the promotion of human rights and fundamental freedoms but would reject any interference in internal affairs under the guise of safeguarding human rights.

23. Some people were trying to impose on others their concept of political standards, social systems and economic patterns. According to them, their ideology was the only correct one and anything that conformed with their standards would be labelled as democracy and freedom, without which there could be no basic human rights. The contemporary world was a pluralistic one consisting of diversified political systems and there had never been a single pattern universally applicable to all cultures and peoples. It was pointed out in both the International Covenants on Human Rights that all peoples had the right freely to determine their political status and freely to pursue their economic, social and cultural development.

24. The Chinese people had chosen the socialist road with Chinese characteristics. In the People's Republic of China, citizens' rights were not subjected to the manipulation of money, property status, ethnic origin, race, sex, occupation, family background, religious belief, education or length of residence, but were enjoyed equally by all citizens. It was because the people were able to enjoy their rights to the full that their initiatives had been fully developed. In tilling 7 per cent of the world's total cultivated land, China had succeeded in feeding a population representing 22 per cent of the total world population. Many people, including some in the West, agreed that such success was itself a protection of human rights and a contribution to the international community.

25. In 1991, eastern China had suffered catastrophic floods which had claimed more than 100 million victims, equal to half of the population of the United States, the entire population of Japan, and that of the United Kingdom and France combined. It could be imagined that relief and rehabilitation on such a scale was not an easy task. It had been due to the joint efforts of the Chinese Government and people that the victims had been properly settled. No one had died of hunger, nor had there been any epidemic, infectious disease or famine. Government officials and army personnel had disregarded their own safety and some had even lost their lives in order to rescue the victims. The successful fight against such natural disasters amply demonstrated that the Government of China served its people's interests to the full and safeguarded their human rights. There was no reason to compel the Chinese people to change the choice they had made. They were not rich in terms of economic wealth, but they were rich in courage to resist unjustified outside pressure. In the past, they had resolutely resisted colonialists who had invaded their country, and they had the determination and strength to reject the imposition on them of any values or social patterns.

26. China endorsed and had consistently advocated enhanced international dialogue and cooperation in the field of human rights. It was ready to engage in talks with other countries to explore ways and means of promoting human rights on the basis of equality and mutual understanding, seeking common ground while preserving differences. It had maintained contact and dialogue with a number of countries and had been seriously fulfilling its international obligations by acceding to a number of international conventions and reporting on their implementation as required. It had also made detailed investigations and provided replies to communications transmitted by the Centre for Human Rights and various rapporteurs and working groups. It would continue such cooperation on an equal basis but would reject the imposition on its people of any concept of values, political standards, social systems or economic patterns. Any attempt to exert political pressure on it under the pretext of human rights would meet with firm resistance.

27. The human rights situation in China was sound. The Chinese people had been enjoying human rights and freedoms as never before. Those qualified to represent China were not a mere handful of people in exile appearing in the conference room but 1.1 billion Chinese people who were industriously working for a better future. The unfounded allegations being made could not obscure the fact that the Chinese people were fully enjoying their human rights and freedoms. Countries that persisted in ignoring the true situation in China and in pressurizing it would achieve nothing but exposure of their double standards and of their efforts to impose their political views and values under the cloak of human rights.

28. Mr. PORTALES (Chile) said that, as stated by the Deputy Minister for Foreign Affairs of Chile at the Commission's forty-seventh session, his country owed a deep debt of gratitude to the international community, and particularly to the United Nations. The Commission's constant efforts through the appointment of ad hoc groups or special rapporteurs had played a most useful role in ensuring respect for human rights in Chile, thus saving many lives and resulting in the freeing of political prisoners, and had been a decisive factor in the return to democracy. Chile would always be grateful for the selectivity which the Commission had shown towards it. It had been

almost the first country to benefit from the constant vigilance exercised by the United Nations with a view to reducing human rights violations. It also highly appreciated the fact that the Commission's concern for Chile had been followed by a growing concern for the serious situation in a number of other countries.

29. The world organization had shown increasing sensitivity towards existing human rights violations. Its public investigations had been extended to a large number of countries in all continents and of all social systems, but for certain geopolitical reasons, many regimes still violating human rights had not as yet been subjected to scrutiny by the Commission. That unfortunate fact should encourage the Commission to step up rather than diminish its concern for specific cases of human rights violations.

30. It was important to stress, firstly, that it was not the Commission that formed world public opinion about violations of human rights in particular countries. Rather, it was their disclosure by the media and their investigation and reporting by non-governmental organizations that made international public opinion aware that human rights were being seriously and repeatedly violated in certain countries. It could, on the other hand, be maintained that it was international public opinion - once convinced of the facts - that generated the necessary conditions for the United Nations to bring up particular cases. The reports on particular countries served to determine the scope of such violations and provide specific recommendations which, because of the moral and political impact of the United Nations, strengthened those who were striving for respect for human rights in the countries concerned. The Commission's work should therefore not be overestimated, since international public opinion was already formed when that body decided to carry out an investigation in a particular country.

31. Secondly, the specific recommendations contained in the reports were meant to benefit, on the one hand, the people whose rights had been violated and, on the other, the Governments whose acts or omissions had been responsible for such violations, or at least those that seriously intended to safeguard their citizens' welfare. No organization or Government welcomed criticism, but those facing the situation maturely would recognize in the long run that such criticism was more profitable than flattery, since it was conducive to improvement, though those who were antagonistic towards any disapproval of their policies would always perceive criticism as an international conspiracy against them. Frequent efforts had been made in the Commission to refute allegations concerning violations of human rights by attributing them to a campaign orchestrated by international communism or imperialism. The striking progress of democracy throughout the world in recent years would fortunately make such statements a thing of the past.

32. It was interesting to note that even in the case of those regimes that followed a logic of war, the criticisms and recommendations of the United Nations in general and the Commission in particular had always had some positive effect. For example, at the precise time when the Chilean dictatorship had been holding a plebiscite and exhorting the people to condemn the United Nations because of its strong criticism of violations of human rights in Chile, the dictatorship had significantly lessened such violations, and following the plebiscite the practice of enforced disappearances had been halted.

33. A further argument sometimes put forward to impugn the activities of the United Nations and of the Commission was that the universality of respect for human rights was subject to the principle of non-intervention in the internal affairs of States. That interpretation was invalid, because fundamental human rights did not originate from any concession by a Government but from the dignity of the human being - a fact of which mankind was becoming increasingly aware and which led it to require certain norms and conduct of its Governments. The State therefore had a constant duty to respect and promote the human rights of its citizens and a duty towards the international community, which had been created to pursue the welfare of all mankind. It was morally unacceptable that the principle of non-intervention in internal affairs should be invoked in order to validate human rights violations, since they were not merely an internal matter.

34. The public procedures of the United Nations for dealing with particular cases could certainly be improved, and his delegation was ready to give every possible help in that regard. It had wholeheartedly welcomed Austria's initiative for the establishment of a procedure that would allow suitable action to be taken in emergency cases without prejudice to the need for a more detailed study. The 1993 World Conference on Human Rights would be an appropriate forum in which to take up that vital matter. The Commission's work of dealing publicly with human rights situations in countries most in need of such treatment was clearly one of the most useful activities for the promotion of human rights undertaken by the United Nations.

35. Mr. SEZAKI (Japan) said that there were two basic principles which his delegation considered important when dealing with human rights situations in various countries. One of them was the principle of non-selectivity. During the discussions, many delegations had expressed their concern about the Commission's choice of cases of violation. At the current session, a comparatively greater number of Asian countries had become targets of allegations. His delegation hoped that that was a mere coincidence, and it reaffirmed its conviction that the Commission should never be guided by politically-motivated selectivity. In order to maintain its credibility in that regard, discussions must be based on well-proven and widely collected facts and evidence. It must also be borne in mind that the situation in some countries escaped the Commission's scrutiny only because there was little relevant information available.

36. The second basic principle was that too much emphasis should not be placed on differences of history, culture and customs, since sight might thereby be lost of the Commission's ultimate purpose. His delegation shared the view that the particular history, cultural background and customs of individual countries should be respected, but that the differences could not be used as an excuse for violating human rights and suppressing people's freedom. However firmly convinced of the righteousness of its own system or acts, every State should profit from the example of others. In an international community in which people and States must help one another in order to survive, arrogance could lead only to isolation and self-destruction. Extreme emphasis on differences of history, culture and customs could only lead to confrontation. Violations of human rights in one country caused political, economic and social problems in neighbouring countries, then in the surrounding regions, and finally posed a global

threat. Since a violation of human rights in any country was thus the concern of all others, his delegation could not accept the argument that discussion of situations in particular countries constituted interference in their internal affairs. It hoped that, with its enlarged membership, the Commission would be a more constructive organ than formerly and would not be undermined by confrontation because of wider differences.

37. It was essential to review the mechanism for ensuring more effective ways and means of protecting human rights and improving the situation once a violation had occurred. His delegation welcomed the Austrian initiative to explore the possibility of an emergency mechanism, the details of which deserved further study and discussion. It hoped that a mechanism satisfactory to all members would shortly be constructed. It would be useful in the process to carry out an overall review of the existing system, particularly as to the effectiveness of the system of special representatives or the procedure established in Economic and Social Council resolution 1503 (XLVIII).

38. The final report of Mr. Ermacora (E/CN.4/1992/33) justified the Commission's continuing concern over the human rights situation in Afghanistan. The Special Rapporteur reiterated that the situation of more than 5 million Afghan refugees had remained unchanged, and his delegation shared the view that the question of the rights of those refugees should be one of the international community's most urgent tasks. It supported the Special Rapporteur's recommendations and earnestly hoped that the negotiated political solution of the conflict would bring to all the Afghan people, including the refugees, early and full enjoyment of their human rights.

39. His delegation regretted that, as could be seen from the report in document E/CN.4/1992/27, the Special Rapporteur on the situation in Cuba had been unable to fulfil his mandate because of the lack of cooperation by the Cuban Government. That Government should respond to the allegations of human rights violations and allow the Special Rapporteur to observe the situation directly, thus demonstrating its willingness to cooperate with the United Nations.

40. In its confidence that the United Nations was playing a valuable role in solving existing problems in Cyprus, Japan had been making substantial contributions since 1978 to the United Nations peace-keeping operation there. It was regrettable, however, that the long-term peace efforts had not as yet proved fruitful. His Government looked forward to seeing the further report of the Secretary-General, expected in April 1992, on any progress made towards convening a high-level international meeting to seek a peaceful solution. It earnestly hoped that under the leadership of the new Secretary-General the process of peaceful negotiations would be accelerated and that the human rights of the population of Cyprus would be fully restored.

41. The international community, and his own country in particular, were deeply interested in the question of democratization and human rights in China. His delegation hoped that that country would respond to the international community's expectations and improve the situation, thereby helping to develop its relations with other countries further.

42. His delegation welcomed the signing on 16 January 1992 of the peace agreement between the Government of El Salvador and the FMLN, and its coming into effect on 1 February 1992. The agreement was an important step towards a lasting peace and the restoration of human rights. He hoped that it would be faithfully observed by both parties and, as recommended by the Special Rapporteur in his report, that all States would help to alleviate the situation of the Salvadorian people who had suffered for so long from the armed conflict.

43. His Government was keeping the human rights situation in Guatemala under careful observation. While welcoming the initiative of President Serrano to improve it, it hoped that such measures as the strengthening of civilian control over the military, judicial, criminal and human rights monitoring systems, together with the reordering of police forces, would promote the adoption of a basic policy of respect for human rights. He appealed to the Government of Guatemala and other parties to speed up the ongoing dialogue for a cessation of the conflict, which would be a decisive step towards improving the human rights situation.

44. His Government regretted the tragic incident that had occurred in Dili, East Timor, on 12 November 1991, but welcomed the preliminary report of the National Commission of Inquiry and the Indonesian Government's prompt and positive response, which demonstrated its recognition of the seriousness of the incident and its sincere attitude towards the international community's concern over human rights. His Government was also encouraged by the Indonesian Government's acceptance of Mr. Wako as the personal representative of the Secretary-General. It hoped that the Indonesian Government would continue to implement the measures ordered by its President and would further improve the living conditions and welfare of the residents of East Timor.

45. While taking note of the Iraqi Government's acceptance of the Special Rapporteur, his delegation was very distressed by its reported human rights violations. It highly commended the Special Rapporteur on the performance of his mandate and the well-balanced nature of his conclusions, in which he had stated that there had been massive violations of human rights of the gravest nature for which the Government of Iraq might be held responsible and that that Government systematically violated its international human rights obligations. His delegation was seriously concerned about those conclusions, which called for urgent measures to improve the human rights situation. It strongly urged the Iraqi Government to accept the Special Rapporteur's recommendations and to comply with Security Council resolution 688 (1991).

46. The Government of Japan shared the grave concern expressed over the situation in Myanmar, although it appreciated the cooperation of the Myanmar Government with the Commission, including the two invitations it had extended in the past to independent experts. Because of the constant and mounting allegations that had been made and the negligible improvement in the human rights situation, consideration of the situation in that country under the procedure provided for in Economic and Social Council resolution 1503 (XLVIII) had been suspended and there was to be a public discussion on it at the current session. His delegation sincerely hoped that the Government would continue to cooperate with the Commission and take full and urgent account of the recommendations of the independent experts.

47. His delegation welcomed the full and valuable cooperation extended by the Government of Sri Lanka to the Working Group on Enforced or Involuntary Disappearances during its visit in October 1991; the measures taken to improve the human rights situation, including the recent establishment of a number of institutions to monitor and inquire into human rights; and the decision to accept many of the recommendations made by Amnesty International in November 1991. It nevertheless shared the concern expressed by other members of the Commission over reported disappearances, detentions and arbitrary executions. While understanding the difficulties faced by the Government of Sri Lanka in solving human rights violations arising from military and political causes, it hoped that the Government would strengthen its efforts to safeguard human rights, for example by accepting the Working Group's recommendations and fulfilling its obligations under the International Covenants on Human Rights. It appealed to all parties and groups in Sri Lanka to respect human rights.

48. His delegation welcomed the Islamic Republic of Iran's continued cooperation with the Special Representative and its agreement with ICRC concerning prison visits, but it noted with concern the Special Representative's conclusion (E/CN.4/1992/34) that Iran had made no appreciable progress in 1991 towards improved compliance with human rights in accordance with international instruments. It hoped the Iranian Government would continue to respond to the international community's requests.

49. His delegation was also concerned about human rights situations in Africa, and particularly in Chad, Somalia, the Sudan and Zaire, all of which were being dealt with under the procedure envisaged in Economic and Social Council resolution 1503 (XLVIII). It hoped that continued and strengthened efforts would be made to improve the human rights situation in those countries.

50. Mr. KOOIJMANS (Netherlands) said that in taking stock of the degree of compliance with human rights standards throughout the world it was evident that the world of 1992 differed from that of 10 years earlier. Many dictatorial and totalitarian regimes had given way to democratic Governments and there was now an opportunity for people to take the future into their own hands and help to shape the politics affecting them. For many people, however, the past was still a reality: either they suffered from the effects of human rights violations to which they had been subjected, they had lost members of their family or they had been implicated in violations because of their position under a previous Government. The problem of dealing with past atrocities, as in the case of the Nürnberg and Tokyo trials, was a problem of all times. The general question was whether violations of human rights and of national and international law generally could go unpunished if higher interests were at stake, and what criteria should be applied. Although the problem of impunity was a delicate one, the Commission should nevertheless deal with it. In his annual report for 1990, the Secretary-General had stressed the faith and expectations that peoples all over the world placed in United Nations efforts to restore human rights where they were denied or violated. That also applied to the call for justice by victims of violations.

51. Whatever their place in the State hierarchy, Government officials unquestionably bore individual responsibility for serious human rights violations as evidenced by the work of the International Law Commission in

preparing a draft code of crimes against the peace and security of mankind. Several reports before the Commission also referred to that individual responsibility. It would clearly not always be possible to translate it into criminal liability, particularly if such violations were part of State policy or were condoned by the Government. Impunity in such instances was part of the governmental system and in other cases it resulted from a lax or indifferent attitude on the part of the authorities. Whatever the cause, it should be borne in mind that impunity for human rights violations under certain circumstances might entail State responsibility. All States Members of the United Nations had pledged themselves under Article 56 of the Charter to take joint and separate action, in cooperation with the Organization, for the promotion of universal respect for and observance of human rights. Attention had frequently been drawn to the inseparable link between the suppression and prevention of human rights violations. In his study on amnesty laws and their role in the safeguarding and promotion of human rights, Mr. Joinet had observed that the most effective deterrent to the use of torture was the knowledge on the part of torturers that they might one day be called to account for their actions.

52. In a judgement of 29 July 1988, the Inter-American Court of Human Rights had argued that the State had a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure adequate compensation to the victims, and had gone on to say that the duty to prevent violations included all means of a legal, political, administrative and cultural nature that promoted the protection of human rights and ensured that any violations were considered and treated as illegal acts that might lead to the punishment of those responsible and the obligation to indemnify the victims.

53. Some doubts had been expressed as to whether Commission resolution 1991/72 on responsibility for violations of human rights and fundamental freedoms did not deal too loosely with difficult and complicated issues of international law. While his delegation shared those doubts to some extent, the resolution clearly reflected the generally held opinion that inquiry, investigation and punishment would serve as a deterrent that might prevent such violations. In paragraph 4 of the same resolution, the Commission appealed to States that had not yet done so to undertake the necessary legislative measures with a view to establishing appropriate legal responsibility under domestic law of those responsible for violations. The international human rights instruments and the action taken by the United Nations offered certain guidelines for formulating rules to regulate individual and State responsibility for human rights violations. There was no systematic handbook on the problem of impunity but the United Nations position on the problem was evident from many sources. The International Covenant on Civil and Political Rights and article 8 of the Universal Declaration on Human Rights provided for an effective remedy that should be open to victims of human rights violations. Although those provisions related primarily to remedies and reparation, it should certainly not be excluded that the latter might also take the form of punishment of the perpetrator. The Convention against Torture stipulated that such acts were offences under criminal law, and also focused on the rights of the victim, establishing the responsibility of the State party to ensure that

complaints were promptly and impartially examined by its competent authorities. Lastly, article IV of the Convention on the Prevention and Punishment of the Crime of Genocide obliged the contracting parties to punish perpetrators, whether they were "constitutionally responsible rulers, public officials or private individuals".

54. While, in their authoritative interpretations, views and general comments, the treaty monitoring bodies, and notably the Human Rights Committee and the Committee against Torture addressed the question of the responsibility of the State in the matter of disappearances (an issue also taken up in several resolutions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), the policy-making organs of the United Nations had on a number of occasions expressed themselves on matters relating to impunity: he was thinking in particular of Economic and Social Council resolution 1989/65. In the report he had mentioned earlier, the rapporteur set the issue of impunity in the perspective of prevention, maintaining that if priority was given to a long-term policy to prevent systematic practices of torture, involuntary or forced disappearances, or extrajudicial executions, the authority granting amnesty to the perpetrators would have to draw a line between a deserved right of oblivion and an unwarranted right to impunity.

55. If he had elected to elaborate on the issue of dealing with past violations of human rights, that was not only because he was mindful of the actual victims crying out for justice, but also because of his concern with regard to potential victims in the future. It was important to pursue a consistent policy of prevention, for how could human rights norms be credible if their violators were not brought to trial?

56. Mr. JAZIC (Yugoslavia) said that any global approach to the question of the violations of human rights and fundamental freedoms in any part of the world, under item 12, must take account of the crisis in his own country. Despite all its present difficulties, however, Yugoslavia remained firmly committed to the principles enshrined in the Charter of the United Nations and in the various international human rights instruments, as well as to the process launched in the framework of the Conference on Security and Cooperation in Europe (CSCE). All human rights were interrelated and indivisible - progress in one domain, be it political, economic, social, cultural or other, must go hand in hand with progress in another; all could best prosper in a democratic and pluralistic society and environment. Moreover, there was an overall international obligation on the part of individual States, as well as the United Nations and its relevant bodies, to foster international cooperation in the field of human rights, which included the rights of minorities.

57. He would not dwell on the circumstances which had led to the tragedy in Yugoslavia, but would merely call attention to documents E/CN.4/1992/71-73, in which the Presidency and the Federal Government had elaborated on the origin and some basic aspects of the crisis. What he wished to highlight was the lesson of experience that there was a fundamental connection between a country's overall stability and the maintenance of a high level of respect for the rights and freedoms of all its citizens. When the balance between the political stability and security of a country, on the one hand, and the rights and freedoms of its citizens, on the other, was upset, chaos ensued, with all

the human and material devastation that armed conflict entailed. A cessation of the fighting was perceived in Yugoslavia as the main precondition for the quest for a political solution through negotiations. While political peace and prosperity could not be maintained, still less promoted, without an adequate promotion of human rights and freedoms in the social domain, not even a minimum standard of human rights and freedoms could be maintained without adequate effort to secure political peace, security and social consensus on fundamental development issues.

58. Legitimate concern for human rights should not, however, be misused for other political purposes or serve as a pretext for unwarranted foreign interference. If the Presidency and Federal Government of Yugoslavia, acknowledging the difficulty of controlling national and social upheavals with indigenous resources, had accepted the mediation of international institutions such as the European Community, CSCE and now the United Nations, they were fully aware that the solution to the crisis lay primarily with the peoples and republics of the country; it must still be hoped that they would address all the problems in a peaceful and constructive manner that would not only satisfy the legitimate rights of all, but contribute to peace and stability in the region and in Europe as a whole. In that connection he wished to point out that the right to self-determination was being claimed not only by peoples who did not wish to remain in the Yugoslav framework, but also by others who wished to continue to live together in a common State.

59. Reiterating Yugoslavia's fundamental devotion to the basic principles on which the international community was based, and its gratitude for the concern of the international community with its present circumstances, he said that while a great deal of help both from individual States and from United Nations bodies must be acknowledged, he could not but call attention to the fanning, beyond Yugoslavia's borders, for political reasons and notably with the aim of exploiting the crisis for unfriendly goals and foreign interests, of nationalist passions and hatreds within the country. Thus, while he appreciated statements such as those made on behalf of the European Community and by the representative of the United States, which demonstrated a genuine desire and constructive commitment to finding a peaceful solution to the crisis, he could not remain silent on the subject of the one-sided and unjustified comments and allegations made notably by the representative of Hungary (a country whose own record hardly entitled it to criticize others for their treatment of minorities), and by the representative of Austria, whose one-sided assertions and assessment of past events was particularly misplaced at a time when the armed conflict had ceased and new efforts were under way for a just and peaceful political solution of the crisis. Yugoslavia's neighbours should endeavour to help by creating an atmosphere more conducive to that goal.

60. Mr. WIERUSZEWSKI (Observer for Poland) said that item 12 had a place at the very heart of the Commission's mandate to deal with violations of human rights and fundamental freedoms wherever they occurred. He himself would add that that included violations of all types without exception and that the examination of a situation in a given country should not prevent it from receiving advisory services and technical assistance in the field of human rights. Echoing the opening statement by the Under-Secretary-General for Human Rights that a worldwide "human rights revolution" was on the way,

several speakers had referred to substantial changes in the situation in many parts of the world. For their part, the peoples of Eastern and Central Europe were seeking new institutional arrangements to match their traditions and expectations, and although much remained to be done, foreign observers had already confirmed that great strides had been made, while it was no accident that the popular movement in Poland, which had exercised enormous appeal among its neighbours, had been born under the banner of Solidarity, in the direct, humanistic sense of that word.

61. It would be illusory to maintain that the quest for a new synthesis between material satisfaction and moral obligation in the so-called post-Communist countries was already complete. Indeed, there were grounds for fearing that the disillusionment associated with painful economic and social issues might dissipate a great deal of the original enthusiasm and create a new threat to the realization of human rights standards in the form of anti-democratic, populist regimes. Old social structures had been destabilized, while the new ones were frequently too weak for the creation of new and stable social relations. Further, given that the revolutionary changes of the late 1980s and early 1990s had been fought for above all in the name of political rights and on the basis of an uncompromising demand for free elections and representative government, it was disconcerting to observe a constant decline in electoral turn-out, accompanied by a rapid decline in political activity, in all the countries of the Eastern and Central European region. Indeed, that was a potentially dangerous phenomenon.

62. The transition from a totalitarian to a democratic system was by no means a simple progression; and the removal of some causes of human rights violations could, under certain circumstances, lead to the creation of new threats of a different character. Events in Yugoslavia and in different regions of the former Soviet Union demonstrated that the former Communist countries were not immune to a serious deterioration of human rights standards. That was why the constant monitoring of the situation in all countries and a speedy response to emerging problems were of vital importance.

63. Pointing out that the cessation and prevention of human rights violations should be a primary concern, he submitted that enforcement mechanisms still seemed far from adequate, even in societies whose commitment to human rights values was beyond doubt. As pointed out by the United Nations High Commissioner for Refugees, violations of human rights, coupled with severe economic deprivation, were producing a disquieting flow of refugees; massacres of civilians, torture, involuntary disappearances, political persecution and violence, and intimidation were still daily occurrences in a number of societies. The Polish delegation would support all efforts to improve the effectiveness of the Commission's working methods, which included the enhancement of preventive mechanisms and the development of stronger means of enforcing human rights standards. In that connection, the establishment within the CSCE process of a procedure for assigning missions of rapporteurs or experts constituted an encouraging initiative. The Polish delegation also endorsed the Austrian proposal whereby the Commission on Human Rights would be endowed with better means of reacting to gross and acute violations of human rights.

64. Mr. ILICAK (Observer for Turkey) singled out as calling for maximum efforts in the quest for peaceful and equitable solutions the situation in Jammu and Kashmir, which he believed could be resolved within the framework of the relevant United Nations resolutions and the 1972 Simla Agreement.

65. Turning to the question of Cyprus, a conflict of which the international community had had enough, he noted with regret that it seemed impossible for Greece and the Greek Cypriots to refrain from declarations and unfounded allegations that poisoned the atmosphere. Contesting the right of the Greek Cypriot representative of the "Republic of Cyprus" to speak in the name of the Turkish Cypriot population, which had been expelled from the island's institutions, he submitted that contrary to what was conveniently alleged by Greece, the problem was more than 25, rather than 17, years old. Between December 1963 and July 1974, the Turkish Cypriots had endured unprecedented cruelty, violence and other violations of human rights at the hands of the Greek Cypriots, themselves mobilized by the Greek Government in the name of a misguided, on occasion murderous and dangerously ambitious Hellenism. Against that background, Turkey's intervention in July 1974, and the proclamation of the Turkish Republic of Northern Cyprus in 1983, must be described as not only timely but necessary actions, designed to protect the Turkish Cypriots from further suffering, and further denials of their rights.

66. Despite past and present difficulties, however, he was convinced that a just and honourable solution was possible, provided that the legitimate rights and above all the security of the Turkish Cypriots were ensured on a basis of bizonality, bicommunality, political equality and effective guarantees to Turkey. Moreover, Security Council resolution 649 (1990) of 12 March 1990, which addressed the two leaders in Cyprus as equals, calling on them to reach freely a solution on an equal footing and defining the already agreed basis of the solution as a bicommunal and bizonal federation, constituted in the Turkish view a historic opportunity that should not be missed. Cyprus should be considered as the common home of the Turkish and Greek Cypriots, whose relationship must be one of equals. Turkey pledged its continued collaboration with the Secretary-General of the United Nations in seeking to achieve the objectives set out in the resolution to which he had referred. If all concerned acted with a sense of responsibility, eschewing violent rhetoric and joining in a sincere, albeit painful soul-searching exercise, progress towards a negotiated settlement might well become a reality, and a just and lasting solution of the Cyprus question might be achieved.

67. Mr. CENKO (Observer for Albania) said that since the start of the process of democratization in his country almost two years previously, all political prisoners had been freed, and legislative and administrative measures had been taken to promote and protect the human rights of all Albanian citizens. The recent legislation was contained in the Law on Constitutional Principles and other texts that would remain in force until the new constitution was adopted.

68. Albania was now a parliamentary republic in which collective and individual human rights, political pluralism, free elections and the independence of the judiciary were guaranteed. Laws guaranteeing economic freedom had been adopted, the equality of all forms of ownership asserted, and the private sector strengthened.

69. Those features formed the basis for a continuation of the process of democratization and reform under the rule of law. The laws enacted by the former regime had been repealed, and new laws guaranteed the effective enjoyment of freedom of expression and of worship, artistic freedom, and political freedoms, including freedom to form political parties and organizations and to hold peaceful public demonstrations. Radio, television and the press had become more independent of the Government. Citizens were free to enter and leave the country and to choose their place of residence.

70. A reform of the Penal Code was under way, and death sentences had been reduced to a minimum. The right to a defence was also guaranteed, and a system for rehabilitation and a statute of limitations had been introduced. Trade unions had been set up, and the right to strike was established in law.

71. The realization of human rights and fundamental freedoms was greatly encouraged by the monitoring activities of the Special Parliamentary Commission for the Protection of Human Rights and Fundamental Freedoms of Individuals and National Minorities, of the Forum for the Protection of Human Rights and Fundamental Freedoms, and of other non-governmental organizations; and by the publication and dissemination of the documents of CSCE and other international instruments. Since 1990 the Albanian Government had been fully committed to respecting all the obligations set forth in the CSCE documents, and to cooperating with the United Nations and CSCE on human rights issues. As well as signing or ratifying a number of international human rights instruments, it had recently concluded a cooperation agreement with the Centre for Human Rights.

72. His delegation was grateful to the delegations of the democratic countries for their helpful comments on the changes taking place in Albania. However, one non-governmental organization seemed to take a romantic nineteenth-century view of the difficulties facing Albania's fledgling democracy. He therefore wished to assert that Albania's new policy of according priority to the promotion of human rights included furtherance of the rights of persons belonging to national minorities. The path to democracy was fraught with hazards and pitfalls; yet during the current period of transition - and indeed, even during the preceding period of totalitarianism - national minorities in Albania had shared the fate, sufferings and privations of the rest of the Albanian people. The new Law on Constitutional Provisions guaranteed minorities the right to express themselves freely and to promote their ethnic, cultural, linguistic and religious identity. It also guaranteed them the right to set up institutions, organizations or associations, to participate effectively in public affairs, and to be represented in executive and legislative organs in central and local administration, on an equal footing with other citizens.

73. Referring in conclusion to the statement made by the representative of Yugoslavia that morning, he said that advancing unfounded allegations was no way to rectify the tragic human rights situation of Albanians in Yugoslavia, the seriousness of which could clearly be seen from the reports by the United States Department of State, Helsinki Watch and non-governmental organizations relating to the year 1991.

74. Mr. RUIZ y AVILA (Mexico), speaking in exercise of the right of reply concerning the statement made the previous day by the representative of the Latin American Federation of Associations of Relatives of Disappeared Detainees, regretted the fact that a non-governmental organization with creditable objectives had allowed irresponsible persons to take the floor in order to present outdated and unfounded information. For example, it had been claimed that there were more than 800 missing persons in Mexico; however, the National Commission for Human Rights (CNDH) and the programme for alleged missing persons had traced 40 of those persons, who had been found alive and well, and living in freedom. His delegation also rejected the claim that activists in opposition political organizations had been murdered in recent years. Political motivation could be the only explanation for such allegations, which, had they been true, would have provoked nationwide indignation.

75. With regard to torture, the few isolated cases reported had been investigated, and those responsible punished. Since its establishment in June 1990, the CNDH had taken criminal proceedings against 64 public officials, 13 of whom had been accused of torture. The adoption and strict application of a new law on torture had significantly reduced the number of cases submitted to the CNDH. The report by Amnesty International to which reference had been made had been satisfactorily accounted for by the Mexican authorities. As for the case of Mr. Martínez Soriano, he was standing trial for the crimes of illicit association and homicide. All Mexican nationals had access to legal remedies and the competent authorities to deal with infringements of their rights. The CNDH had gained the respect and confidence of society, and the Commission had been fully informed of its activities.

76. Mr. KHOURY (Syrian Arab Republic), speaking in exercise of the right of reply, referred to the concern expressed by the representatives of Canada and the Russian Federation regarding the human rights of so-called "religious minorities" in Syria. He wished to reiterate that all allegations of violations of religious freedoms were without foundation, as was made clear in a document on the question distributed by his delegation.

77. Political awareness in his country was among the highest in the world. The same could not be said for other so-called democracies, in which only a few thousand out of millions of citizens showed political awareness. Syria had no need of advice from others; for democracy and political pluralism were deeply rooted in its system. Some countries tried to set themselves up as the arbiters of human rights in the world, conferring upon themselves the mission of disseminating "universal" standards. Thus, if Syrians wished to retain the right to adhere to traditional customs, they were accused of perpetuating underdevelopment. If, however, they called for international cooperation to enable them to build a solid economy, they were told that that was an internal affair in which the international community did not wish to meddle. His country's development had often been hampered in the past by foreign intervention of that sort.

78. Mr. HOURORO (Observer for Morocco), speaking in exercise of the right of reply, said that the bias of some non-governmental organizations against Morocco was particularly apparent from the allegations made by the representative of the Movement against Racism and for Friendship among Peoples.

His delegation wished to reiterate that no persons from Western Sahara had gone missing in Morocco. Indeed, persons reported missing had since been discovered in Polisario-controlled camps, where they were being held in atrocious conditions. His delegation had evidence of disappearances, detentions and torture perpetrated by the present Polisario leaders in those camps, which no non-governmental organization had dared to denounce. That evidence was set forth in a document that was available to members of the Commission.

79. Mr. FERNANDEZ (Cuba), speaking in exercise of the right of reply, said it was regrettable that the representative of Japan had seen fit to refer to the "lack of cooperation" of the Cuban Government with the so-called Special Representative on the human rights situation in Cuba. That remark was all the more curious in that he had previously deplored the selective and discriminatory character of some of the Commission's resolutions. He wished to make it clear that Cuba regarded resolution 1991/68, and the mandate it conferred on the Special Representative, as morally and politically involved, since it had been adopted under pressure from the United States. His Government would not cooperate with any rapporteur appointed with that mandate under such circumstances. On the other hand, it would continue to cooperate with the United Nations and the Commission in the framework of the procedures and mechanisms established by Member States as a whole. In the total of 48 replies it had submitted to rapporteurs, working groups and the Centre for Human Rights over the past two years, Cuba had satisfactorily refuted all the false allegations made. The Secretariat was in possession of the documentation on the matter, and his delegation would be pleased to make that documentation available to the delegation of Japan.

80. Mr. MARKIDES (Cyprus), speaking in exercise of the right of reply, said that he had been amazed to hear the observer for Turkey, say that the international community had had enough of the Cyprus problem. In actual fact, it was the people of Cyprus who had had enough of gross violations of their human rights by Turkey. As to the allegation that the Turkish invasion had been in accordance with international law and with the treaty of guarantee, a principal aim of that treaty had been to guarantee that the island would not be partitioned, whereas the aim of the invasion had been to secure such a partitioning. In that regard, he referred the observer for Turkey to the 50 mandatory resolutions of the Security Council on the question. He had been glad to hear the observer speak of Turkey's readiness to support the efforts of the Secretary-General, but sorry that the Secretary-General's latest contacts with the Turkish side had apparently been inconclusive. As to the pseudo-State and the "two peoples" to which he had referred, those references were a contemptuous rejection of the Security Council resolutions. The allegations of oppression of Turkish Cypriots had been refuted time and again. Turkey, a country that was under constant scrutiny by the international community for its human rights record, that had been found responsible by the European Commission of Human Rights for continued, massive and gross violations of human rights in Cyprus, that had declined to make a joint application to the International Court of Justice, should pause before unjustly accusing others. The decision of the European Commission of Human Rights of 8 October 1991, objectively confirmed that Turkish Cypriots were oppressed by the occupation regime, which denied them contacts with Greek Cypriots; reconfirmed that part of the island was under military occupation by

Turkey; and again recognized Cyprus as a unitary State. Was Turkey at long last willing to accept the Security Council resolutions, or would it continue to ignore them?

81. Mr. ILICAK (Observer for Turkey), speaking in exercise of the right of reply, said that the representative of the Greek Cypriots had tried deliberately to divert attention from the issue that lay at the root of the Cyprus question, namely, the very survival of the Turkish Cypriot people on the island, and their most fundamental human right, the right to life itself. During a speech made in the village of Panayia on 4 September 1962, Archbishop Makarios had declared that expulsion of the Turkish Cypriots from their homeland was a national objective of the Greek Cypriots. All conceivable methods were to be utilized to achieve that objective, including the wholesale killing of the Turkish Cypriot population. That was what lay at the core of the security concerns of the Turkish Cypriot people. Furthermore, he reminded members of the Commission that the enosis resolution adopted by the Greek Cypriot House of Representatives on 26 June 1967, declaring that the struggle to unite an undivided Cyprus with Greece would not be suspended, had never been repealed and remained in force to the present day.

The meeting rose at 9.10 p.m.